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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,871	01/28/2000	Christopher Evans	11714-P02	2773
7590	12/16/2003		EXAMINER	
Jerry Cohen, Esq. Perkins, Smith & Cohen, LLP One Beacon Street, Suite 30 Boston, MA 02108-3106			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	
DATE MAILED: 12/16/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/493,871	EVANS ET AL.
Examiner	Art Unit	
Mitra Aryanpour	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 October 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 7-11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 7-11 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). ____ .
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . 6) Other: ____ .

DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (4,147,353) in view of Sowards (4,720,095) and Ainscough et al (5,957,789).

Moore shows an apparatus for holding a soccer ball, comprising: a tie down stake (1) having a lower portion and a circular-shaped upper portion (see figure 1); a ring (2) on the circular-shaped upper portion, wherein the ring (2) is able to travel along a substantial portion of the circular-shaped upper portion; means for (6) securing a soccer ball (8) in a minimally interfering way with kicking, the securing means comprising straps (6a, 6b, 6c, and 6d) for holding the ball (8) tied to a tether line, wherein the tether line has one section which is elastic (4) and attached to the swivel connection (3), and another section that is inelastic (5) and attached to the securing means (straps 6), the tether line being tied at its ends to and extending between the ring and the means for securing (see figure 10); and means for enabling the tether line to rotate about its own axis (3). Moore is silent as to the use of 1) various types of stake including spiraled, 2) the use of net as means for securing the ball, and 3) providing a removable swivel means.

Sowards shows an apparatus for holding a soccer ball (110), wherein the stake is a tie down stake (112) having a spiraled lower portion (114); a circular-shaped upper portion (118); a handle under the circular-shaped upper portion (120) that is projecting from the tie-down stake

(112), wherein the handle projects from the stake and is constructed and arranged for seating at ground level when the spiraled lower portion of the stake is fully inserted into the ground (see figure 10); a ring (128) on the circular-shaped (118) upper portion, wherein the ring (128) is able to travel along a substantial portion of the circular-shaped (118) upper portion and the ball (110) being attached directly to the ring (128). See figure 10. Additionally Sowards shows an alternative means of anchoring the training device to the ground (see figure 8), wherein the stake is substantially the same as the stake of Moore. In view of Sowards, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a spiraled-type stake with a handle for the apparatus of Moore, the motivation being, it would secure the tethered-ball assembly more securely to the ground.

Ainscough et al shows a soccer training device, having a ball (12), a tether (16), a detachable link (20) and a hookable/removable swivel-eye bolt (26) attached to an upright (46), (column 2, lines 51-64 and column 3, lines 30-41), wherein the upright (46) is shown to be secured to the ground (59) in several different ways, and wherein the means for securing the ball is a net (14), see figures 1, 4 and 5. In view of Ainscough, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a removable swivel-eye bolt for the device of Moore, the motivation being, in order to provide an efficient connection and for allowing the ball to freely rotate 360 degrees without the cord winding upon itself; and additionally to have also provided a net similar to the one shown by Ainscough for the modified device of Moore, so that the ball is able to move more freely within its confines creating a more realistic practice session.

Response to Arguments

3. Applicant's arguments with respect to claims 7-11 have been considered but are not persuasive. With regards to applicant's remarks that the prior art of record references (Moore, Sowards and Ainscough) do not show *a synergistic solution in a minimally-interfering soccer practice tool that provides realistic ball motion and true 360 degree range of kicking ability that includes strong ground-adhering characteristics in a manner not obvious to past or even some present artisans*. The Moore reference shows a soccer practice device that has a strong ground-connection. Numerous means are well known for securing a tethered ball to a ground surface. Both Ainscough et al and Sowards show this. Sowards essentially shows substantially the same ground-securing means as claimed by applicant. With respect to providing a realistic ball motion and true 360-degree range of kicking ability with minimal interference, this is not only shown by Moore but also thought by Ainscough et al (column 1, lines 44-52).

Acknowledgement is made of the supplemental declaration filed 06 October 2003. However, the declaration is insufficient to overcome the rejection of claims 7-11. The affidavit fails to overcome the *prima facie* case established by the applied prior art. The affidavit has failed to overcome the *prima facie* case of obviousness.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



MITRA ARYANPOUR
PATENT EXAMINER

MA

09 December 2003